

**JUL 25 2003**Martinez v. INS, 02-71478

KLEINFELD, Circuit Judge, dissenting:

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

I respectfully dissent. The BIA rejected Martinez's credibility because "the claim the respondent presented before the asylum officer was inconsistent with the one he pursued at the hearing." He had fair notice from the IJ's decision of this reason for rejecting his credibility, and tried to explain it away in his appeal to the BIA, but the BIA was "not persuaded by the respondent's explanations for this discrepancy."

Martinez twice lied under oath to the INS. He invented a story about having been a member of a student-led political activist group. As he later admitted, this story was entirely untrue. Such "material misstatements of fact" and "gross inconsistencies" in an application for asylum that "involve[] the heart of the asylum claim" may provide substantial evidence for an adverse credibility finding. Ceballos-Castillo v. INS, 904 F.2d 519, 520 (9th Cir. 1990).

In Ceballos, we explicitly distinguished such falsehoods from the incidental falsehoods told in Turcios v. INS, 821 F.2d 1396 (9th Cir. 1987). The majority relies on Akinmade v. INS, 196 F.3d 951 (9th Cir. 1999) for the proposition that Martinez's previous lies are "wholly consistent" with

his claim of fear of future persecution. Akinmade, relying on Turcios, addresses a different situation than that in the case at bar. Here, as in Ceballos, the asylum applicant did not lie about his country of origin or incidental details of his past, but rather completely invented the entire basis for his claim for asylum. His previous story cannot be “wholly consistent” with his current story, since he has admitted the previous story to be entirely false. Rather, this is the “180 degree” change that we held in Ceballos-Castillo to be substantial evidence for an adverse credibility finding.

The IJ articulated a legitimate, cogent reason for his adverse credibility finding, namely the fact the Martinez lied to the INS in his prior application, and the BIA clearly adopted that reason as well, noting as it did that it was unpersuaded by Martinez’s attempt to explain that reason away. The deferential standard of review requires that we deny the petition.